

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS**

ENGELHARD CORPORATION,)	
)	
Plaintiff,)	
)	
v.)	Civil Action No. 05-11241-JLT
)	
UNITED STATES OF AMERICA, <u>et al.</u> ,)	<i>(Electronic filing)</i>
)	
Defendants.)	
)	
)	

UNITED STATES' MOTION FOR PARTIAL DISMISSAL

Pursuant to Rules 12(b)(1) and 12(b)(6) of the Federal Rules of Civil Procedure, Defendants United States of America, United States Department of Defense, Donald Rumsfeld, in his official capacity as Secretary of Defense, United States Mint, David Lebryk, in his official capacity as Acting Director of the United States Mint,^{1/} United States Nuclear Regulatory Commission, and Nils J. Diaz, in his official capacity as Chairman of the United States Nuclear Regulatory Commission (collectively “United States”) hereby respectfully move the Court for an order dismissing the first, second, third, fifth, and sixth causes of action in Plaintiff Engelhard Corporation’s (“Engelhard”) Complaint.

As is explained more fully in the Memorandum In Support of United States’ Motion to Dismiss, which is being filed concurrently herewith, Engelhard’s first, second, and third causes of action are authorized neither by the Comprehensive Environmental Response, Compensation, and Liability Act (“CERCLA”), 42 U.S.C. §§ 9601-75, nor “federal common law.” In addition,

^{1/} Pursuant to Federal Rule of Civil Procedure 25(d), David Lebryk, the Acting Director of the United States Mint, is substituted for Henrietta Holsman Fore as a party to this action.

Engelhard's citizen suit claim must fail, since RCRA does not waive the United States' sovereign immunity with respect to claims under RCRA seeking response costs, and RCRA does not authorize recovery of past cleanup costs by private parties. Lastly, the Declaratory Judgment Act does not create a cause of action, but rather is authorizes declaratory relief in instances where subject matter jurisdiction otherwise exists.

Accordingly, Engelhard has failed to state a claim on which relief can be granted, and this Court lacks subject matter jurisdiction to entertain the claims in question in the Complaint. As such, the first, second, third, fifth, and sixth causes of action in Engelhard's Complaint should be dismissed. A proposed order is attached to the United States' Memorandum In Support.

REQUEST FOR ORAL ARGUMENT

Pursuant to Local Rule 7.1(d), the United States respectfully requests oral argument.

Respectfully submitted,

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Dated: October 18, 2005

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Local Rule 7.1(a)(2) Certification

Undersigned counsel certifies that pursuant to the requirements under Local Rule 7.1(a)(2), he has conferred in good faith with Plaintiff's counsel, and Plaintiff Engelhard Corporation is opposed to the motion.

/s/ Stephen E. Crowley
STEPHEN E. CROWLEY
Attorney for the Defendants

CERTIFICATE OF SERVICE

I hereby certify that I have this 18th day of October 2005, served a true and correct copy of the foregoing UNITED STATES' MOTION FOR PARTIAL DISMISSAL on Plaintiff's counsel of record by electronic filing, as follows:

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